

This Opinion is Not a
Precedent of the TTAB

Mailed: December 6, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Wrangler Apparel Corp.
v.
Denimci Dis Ticaret Pazarlama Anonim Sirketi

Opposition No. 91264198

Paul J. Kennedy and Sean P. McConnell of Troutman Pepper Hamilton Sanders
LLP for Wrangler Apparel Corp.

Alexander S. Lazouski of Lazouski IP LLC for Denimci Dis Ticaret Pazarlama
Anonim Sirketi

Before Zervas, Lynch and Pologeorgis,
Administrative Trademark Judges.

Opinion by Lynch, Administrative Trademark Judge:

I. Background and Evidentiary Record

Denimci Dis Ticaret Pazarlama Anonim Sirketi (“Applicant”) seeks registration



on the Principal Register of the mark, (DENIM disclaimed), for the following goods and services:

Woven or non-woven textile fabrics, namely, denim fabric, adhesive fabric for application by heat, billiard cloth, brocades, buckram, calico, canvas for tapestry or embroidery, cheese cloth, chenille fabric, cotton fabrics, damask, esparto fabric, fabric for footwear, fabric, namely, fustian fabric that is impervious to gases for aeronautical balloons, fabric of imitation animal skins, fabrics for textile use, felt, fiberglass fabrics for textile use, hemp cloth, hemp fabric, jute fabric, knitted fabric, linen cloth, lingerie fabric, lining fabric for footwear, muslin fabric, non-woven textile fabrics, printed calico cloth, ramie fabric, rayon fabric, shrouds, silk fabrics for printing patterns, sleeping bag liners, traced cloth for embroidery, upholstery fabrics, velvet, woolen cloth; textile goods for household use, namely, bath linen except clothing, bath mitts, bed covers, bed blankets, bed covers of paper, bed linen, bed valances, blankets for household pets, bolting cloth, cloths for removing make-up, coasters of textile, covers for cushions, curtain holders of textile material, curtains of textile or plastic, door curtains, face towels of textile, fitted toilet lid covers of fabric, furniture coverings of plastic, handkerchiefs of textile, household linen, mattress covers, mosquito nets, net curtains, oilcloth for use as tablecloths, picnic blankets, pillowcases, pillow shams, place mats of textile, printers’ blankets of textile, shower curtains of textile or plastic, tablecloths, not of paper, table linen, not of paper, tablemats of textile, table napkins of textile, table runners, not of paper, towels of textile, tulle, wall hangings of textile; flags, pennants, labels of textile; swaddling blankets; sleeping bags for camping; All of the aforementioned goods made in whole or in significant part denim in International Class 24;

Clothing, including underwear and outer clothing, other than special purpose protective clothing, namely, ascots, bathing caps, bathing suits, bathing trunks, bath robes, bibs, not of paper, boxer shorts, brassieres, breeches for wear, camisoles, chasubles, coats, corselets, cuffs, detachable collars, dresses, dressing gowns, dress shields, fingerless gloves, fishing vests, fur stoles, gaiters, garters, girdles, hairdressing capes, heelpieces for stockings, hosiery, judo uniforms, jumper dresses, karate uniforms, kimonos, leotards, liveries, mantillas, masquerade costumes, mittens, neckties, overalls, overcoats, pajamas, panties, parkas, pelerines, pelisses, petticoats, pockets for clothing, pocket squares, ponchos, saris, sarongs, sashes for wear, scarfs, shawls, shirt fronts, shirts, shirt yokes, short-sleeve shirts, ski gloves, skirts, skorts, sleep masks, socks, sock suspenders, sports jerseys, sports singlets, stockings, stocking suspenders, suits, sweat-absorbent socks, sweat-absorbent stockings, sweat-absorbent underwear, sweaters, tee-shirts, tights, trousers, trouser straps, turbans, underpants, underwear, uniforms, vests, wet suits for water-skiing, wimples; footwear, shoes, slippers, sandals, namely, ankle boots, bath sandals, bath slippers, beach shoes, boots, boots for sports, boot uppers, esparto shoes or sandals, football boots, footwear, footwear uppers, galoshes, gymnastic shoes, half-boots, heelpieces for footwear, heels, inner soles, lace boots, sandals, shoes, ski boots, slippers, soles for footwear, sports shoes, studs for football boots, tips for footwear, welts for footwear, wooden shoes; headwear, hats, caps with visors, berets, caps being headwear, skull caps; All of the aforementioned goods made in whole or in significant part denim in International Class 25; and

Advertising, marketing and public relations; organization of exhibitions and trade fairs for commercial or advertising purposes; design for advertising; provision of an online marketplace for buyers and sellers of goods and services; business management, business administration and business consultancy; accounting; commercial consultancy services; personnel recruitment, personnel placement, employment agencies, import-export agencies; temporary personnel placement services; auctioneering; the bringing together, for the benefit of others, of a variety of goods, namely, perfumery, non-medicated cosmetics, fragrances, deodorants for personal use and animals, clothing for

protection against accidents, irradiation and fire, safety vests and life-saving apparatus and equipment, eyeglasses, sunglasses, optical lenses and cases, containers, parts and components thereof, jewelry, imitation jewelry, gold, precious stones and jewelry made thereof, cufflinks, tie pins, statuettes and figurines of precious metal, clocks, watches and chronometrical instruments, chronometers and their parts, watch straps, goods made of leather, imitations of leather or other materials, designed for carrying items, bags, wallets, boxes and trunks made of leather or stout leather, keycases, trunks [luggage], suitcases, woven or non-woven textile fabrics, namely, denim fabric, adhesive fabric for application by heat, billiard cloth, brocades, buckram, calico, canvas for tapestry or embroidery, cheese cloth, chenille fabric, cotton fabrics, damask, esparto fabric, fabric for footwear, fabric, fustian, impervious to gases, for aeronautical balloons, fabric of imitation animal skins, fabrics for textile use, felt, fiberglass fabrics for textile use, hemp cloth, hemp fabric, jute fabric, knitted fabric, linen cloth, lingerie fabric, lining fabric for footwear, muslin fabric, non-woven textile fabrics, printed calico cloth, ramie fabric, rayon fabric, shrouds, silk fabrics for printing patterns, sleeping bag liners, traced cloth for embroidery, upholstery fabrics, velvet, woolen cloth, textile goods for household use, namely, bath linen, except clothing, bath mitts, bed covers, bed blankets, bed covers of paper, bed linen, bed valances, blankets for household pets, bolting cloth, cloths for removing make-up, coasters of textile, covers for cushions, curtain holders of textile material, curtains of textile or plastic, door curtains, face towels of textile, fitted toilet lid covers of fabric, furniture coverings of plastic, handkerchiefs of textile, household linen, mattress covers, mosquito nets, net curtains, oilcloth for use as tablecloths, picnic blankets, pillowcases, pillow shams, place mats of textile, printers' blankets of textile, shower curtains of textile or plastic, tablecloths, not of paper, table linen, not of paper, tablemats of textile, table napkins of textile, table runners, not of paper, towels of textile, tulle, wall hangings of textile, flags, pennants, labels of textile, swaddling blankets, sleeping bags for camping, clothing, including underwear and outer clothing, other than special purpose protective clothing, namely, ascots, bathing caps, bathing suits, bathing trunks, bath robes, bibs, not of paper, boxer

shorts, brassieres, breeches for wear, camisoles, chasubles, coats, corselets, cuffs, detachable collars, dresses, dressing gowns, dress shields, fingerless gloves, fishing vests, fur stoles, gaiters, garters, girdles, hairdressing capes, heelpieces for stockings, hosiery, judo uniforms, jumper dresses, karate uniforms, kimonos, leotards, liveries, mantillas, masquerade costumes, mittens, neckties, overalls, overcoats, pajamas, panties, parkas, pelerines, pelisses, petticoats, pockets for clothing, pocket squares, ponchos, saris, sarongs, sashes for wear, scarfs, shawls, shirt fronts, shirts, shirt yokes, short-sleeve shirts, ski gloves, skirts, skorts, sleep masks, socks, sock suspenders, sports jerseys, sports singlets, stockings, stocking suspenders, suits, sweat-absorbent socks, sweat-absorbent stockings, sweat-absorbent underwear, sweaters, tee-shirts, tights, trousers, trouser straps, turbans, underpants, underwear, uniforms, vests, wet suits for water-skiing, wimples, footwear, shoes, slippers, sandals, namely, ankle boots, bath sandals, bath slippers, beach shoes, boots, boots for sports, boot uppers, esparto shoes or sandals, football boots, footwear, footwear uppers, galoshes, gymnastic shoes, half-boots, heelpieces for footwear, heels, inner soles, lace boots, sandals, shoes, ski boots, slippers, soles for footwear, sports shoes, studs for football boots, tips for footwear, welts for footwear, wooden shoes, headgear, hats, caps with visors, berets, caps [headwear], skull caps, enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues; all of the aforementioned items and services provided in relation to items made in whole or in significant part denim in International Class 35.¹

The application contains the following description: “The mark consists of a stylized ‘W’ above the word ‘DENIM’ all in blue.” The color blue is claimed as a feature of the mark.

¹ Application Serial No. 79271371 is a request for extension of protection of International Registration No. 1496878 under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f(a).

In its Notice of Opposition, Wrangler Apparel Corp. (“Opposer”) opposes registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), based on common law rights and numerous registered marks,² including the following we consider most relevant (“Opposer’s W Registrations” for “Opposer’s W Marks”):



for:


Headgear, namely, caps in International Class 25;³ and


Clothing, namely, tops; belts, also in International Class 25.⁴

² Opposer’s pleaded current registrations that are of record are: Registration Nos. 634868, 3322277, 3777026, 4090286, 4572699, 4656517. Opposer’s pleaded Registration No. 3985886 and Registration No. 4782316 were cancelled after the institution of this proceeding because Opposer did not make the required maintenance filings. Although Opposer pleaded its then-pending Application Serial No. 88149303, and submitted a copy of the TSDR record with its Notice of Opposition, Opposer did not subsequently introduce the resulting registration, so we have not considered it. *See* TRADEMARK MANUAL OF EXAMINING PROCEDURE § 704.03(b)(1)(A) n. 4 (2022) and cases cited therein.

³ Registration No. 3777026 issued April 20, 2010 and has been maintained. The registration includes a description of the mark that states, “[t]he mark consists of a stylized ‘W.’” Color is not claimed as a feature of the mark.

⁴ Registration No. 4656517 issued December 16, 2014 and has been maintained. Color is not claimed as a feature of the mark.

 for men's, ladies' Western style dungarees⁵
in U.S. Class 39.⁶

 , under Section 2(f), for jeans, casual
pants, shorts, skirts, shirts, blouses, vests, jackets, diaper
covers in International Class 25.⁷

In its Answer, Applicant denied the salient allegations in the Notice of Opposition.

The record includes the pleadings and pursuant to Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), the file of the opposed application. Opposer supplemented the record with TSDR records of its pleaded registrations and then-pending application, attached to the Notice of Opposition pursuant to Trademark Rule 2.122(d)(1), 37 C.F.R. § 2.122(d)(1), online and printed publications filed under a notice of reliance,⁸ as well as a testimony declaration with exhibits.⁹ Opposer filed a brief.¹⁰

⁵ We take judicial notice of the definition of “dungarees” as “clothes made usually of blue denim.” Merriam-Webster.com entry for “dungarees,” accessed December 2, 2022. The Board may take judicial notice of definitions from dictionaries, including online dictionaries that exist in printed format. *E.g.*, *In re S. Malhotra & Co. AG*, 128 USPQ2d 1100, 1104 n.9 (TTAB 2018).

⁶ Registration No. 634868 issued September 25, 1956 and has been maintained.

⁷ Registration No. 3322277 issued October 30, 2007 and has been maintained. The registration contains the following description: “The mark consists of Stitching in shape of W.” Color is not claimed as a feature of the mark.

⁸ 23 TTABVUE.

⁹ 17-22 TTABVUE.

¹⁰ 24-25 TTABVUE.

Applicant did not submit any evidence or file a brief, but Applicant is not required to do so. The burden rests on Opposer to establish its statutory entitlement to oppose and to prove its claim by a preponderance of the evidence. *See B&B Hardware, Inc. v. Hargis Ind., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015) (“The party opposing registration bears the burden of proof, see § 2.116(b), and if that burden cannot be met, the opposed mark must be registered, see 15 U.S.C. § 1063(b)”).

II. Statutory Entitlement to Oppose¹¹

To establish statutory entitlement to oppose under Section 13 of the Trademark Act, 15 U.S.C. § 1063, Opposer must demonstrate a real interest in the proceeding and a reasonable belief of damage. *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 2020 USPQ2d 10837 at *3 (Fed. Cir. 2020), *cert. denied*, 142 U.S. 82 (2021); *see also Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014); *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1727 (Fed. Cir. 2012); *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999).

Opposer attached to the Notice of Opposition TSDR records of its pleaded registrations. Opposer’s ownership of the pleaded registrations identified above, for which status and title are established, support its plausible likelihood of confusion claim against the involved application, thereby showing its real interest in this proceeding and a reasonable basis for Opposer’s belief of damage. Opposer therefore

¹¹ Despite the shift in nomenclature from “standing,” our prior decisions and those of the Court of Appeals for the Federal Circuit that refer to “standing” in interpreting Section 13 remain applicable.

has established its entitlement to a statutory cause of action. *See Coach Servs.*, 101 USPQ2d at 1727-28; *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000).

III. Priority and Likelihood of Confusion

A. Priority

Because Opposer has made the subsisting registrations identified above of record, and Applicant has not counterclaimed to cancel them, priority is not an issue as to the marks and goods covered by those registrations. *See Top Tobacco LP v. N. Atl. Op. Co.*, 101 USPQ2d 1163, 1169 (TTAB 2011) (citing *King Candy, Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 82 USPQ 108 (CCPA 1974)); *see also Massey Junior Coll., Inc. v. Fashion Inst. of Tech.*, 492 F.2d 1399, 181 USPQ 272, 275 n.6 (CCPA 1974) (“prior use need not be shown by a plaintiff relying on a registered mark unless the defendant counterclaims for cancellation”); *Itel Corp. v. Ainslie*, 8 USPQ2d 1168, 1169 (TTAB 1988) (“because of the existence of opposer’s valid and subsisting registration, it need not prove prior use as to the services recited therein”).

B. Likelihood of Confusion Background

The determination under Section 2(d) involves an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (setting forth factors to be considered, hereinafter referred to as “*DuPont* factors”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). A likelihood of confusion analysis often focuses on the similarities between the marks and the

similarities between the goods and/or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”). Opposer bears the burden of proving its claim of likelihood of confusion by a preponderance of the evidence. *Cunningham*, 55 USPQ2d at 1848.

We decide likelihood of confusion based on Opposer’s W Registrations. Opposer’s W Marks are more similar to Applicant’s mark, and/or cover goods more related to Applicant’s goods and services than Opposer’s other pleaded registrations. The priority established through the presumptions afforded Opposer’s W Registrations avoids the assessment of priority of use based on common law rights. Therefore, we need not reach likelihood of confusion based on the remaining registered marks or Opposer’s alleged common law rights. *Cf. In re Davey Prods.*, 92 USPQ2d 1198, 1201 (TTAB 2009) (“In this case, our Section 2(d) findings and analysis need be and shall be based on only one of the cited registrations”); *see also Palm Bay Imps. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (where the likelihood of confusion determination is reversed as to one pleaded mark, but affirmed as to the other two pleaded marks, registration is refused).

C. Strength of Opposer’s W Marks

Before we turn to the similarity of the marks, we consider Opposer’s contention that its marks are well known and entitled to a broad scope of protection. In

determining the strength of a mark, we consider conceptual strength, based on the nature of the marks themselves, and commercial strength, based on marketplace recognition of the marks. *See In re Chippendales USA, Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010). “A mark with extensive public recognition and renown deserves and receives more legal protection than an obscure or weak mark,” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1689 (Fed. Cir. 2018) (quoting *Kenner Parker Toys Inc. v. Rose Art Indus., Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992)), and a “very strong mark receives a wider latitude of legal protection in the likelihood of confusion analysis.” *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1056 (TTAB 2017) (citing *Palm Bay Imps.*, 73 USPQ2d at 1694).

We consider Opposer’s W Marks conceptually strong based on this record. We have no indication that they have any recognized meaning in the industry. Also, Opposer’s W marks, except for its stitching mark registration that does include a Section 2(f) claim, otherwise are registered on the Principal Register without a claim of acquired distinctiveness. We therefore treat Opposer’s W Marks in the registrations without claims of acquired distinctiveness as inherently distinctive, and the stitching mark as distinctive. Trademark Act Section 7(b), 15 U.S.C. § 1057(b); *Tea Bd. of India v. Republic of Tea, Inc.*, 80 USPQ2d 1881, 1889 (TTAB 2006); *see also Alcatraz Media, Inc. v. Chesapeake Marine Tours Inc. dba Watermark Cruises*, 107 USPQ2d 1750, 1764 (TTAB 2013) (“The presumption of validity that attaches to a registration issued

pursuant to Section 2(f) includes a presumption that the registered mark has acquired distinctiveness”).

Turning to commercial strength, we find it where “a significant portion of the relevant consuming public . . . recognizes the mark as a source indicator.” *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017) (citing *Palm Bay Imps.*, 73 USPQ2d at 1694). This type of strength of a mark is measured “along a spectrum from very strong to very weak.” *Id.* (internal citations omitted). Commercial strength may be measured indirectly by the volume of sales and advertising expenditures in connection with the goods sold under the marks, and other factors such as length of time of use of the marks; widespread critical assessments; notice by independent sources of the goods identified by the marks; and the general reputation of the goods. *Weider Publ’ns, LLC v. D & D Beauty Care Co.*, 109 USPQ2d 1347, 1354 (TTAB 2014); *see also Bose Corp. v. QSC Audio Prods. Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1308 (Fed. Cir. 2002) (recognizing indirect evidence as appropriate proof of strength).

Opposer presented a variety of evidence regarding strength. Through the testimony declaration of its Vice President & General Manager – Western Wrangler, Allen Montgomery, Opposer provided confidential worldwide sales and advertising figures for “WRANGLER (All Brands).”¹² However, given that the figures are not limited to the relevant U.S. market, and given that they do not appear to be limited to sales and advertising under the marks at issue in this case, we cannot accord the

¹² 22 TTABVUE 4 (confidential).

evidence much probative value. *See Sunnen Prods. Co. v. Sunex Int'l Inc.*, 1 USPQ2d 1744, 1748 n.16 (TTAB 1987) (fame of opposer's mark not established by trial testimony that was "deficient in that it does not indicate under what mark the foreign or domestic sales were made. (The question was not asked.); *Olin Corp. v. Hydrotreat, Inc.*, 210 USPQ 63, 68 (TTAB 1981) (criticizing testimony that did not distinguish between opposer's domestic and foreign sales and advertising).

Mr. Montgomery testified that "Wrangler's iconic 'W' mark" was "first introduced in connection with authentic western jeans in 1947."¹³ According to Mr. Montgomery, "Wrangler's product line featuring W Marks has consistently included denim, casual pants, shorts, woven shirts, knit shirts, boots, jackets, outdoor apparel, hats, and accessories, all for at least the last 40 years. The W Marks are regularly featured on both the clothing products themselves, as well as on product labels and tags."¹⁴ He states that Opposer has used look-for advertising "that calls attention to its iconic W Marks," and provides "historical advertisements and articles" as examples.¹⁵ There is some look-for advertising pointing to the W Marks, rather than to the WRANGLER mark (for which there is considerably more). The record shows the W Marks featured on jeans as well as pockets of shirts and jackets, and Mr. Montgomery's declaration makes clear that Opposer's products are widely available, but without specifying how much of that availability pertains to products with the W Marks rather than the

¹³ 17 TTABVUE 3.

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 6; 21 TTABVUE 65-147 (Exhibit 18).

WRANGLER mark. Mr. Montgomery also points to the marketing and promotion of “WRANGLER and W Marks widely across nearly every available media outlet,” Opposer’s use of celebrity brand ambassadors and celebrity collaborations featuring “Wrangler and its W Marks.”¹⁶ Again, the documentary evidence suggests that the ambassadors and other celebrity endorsements feature WRANGLER more, and generally more prominently, than the W Marks. The record, especially Opposer’s social media uses, shows some standalone uses of the W marks, or uses where the W mark is more prominent than, or equal in prominence to, the WRANGLER house mark.


Overall, under the considerations discussed in *Bose*, 63 USPQ2d at 1305-09, and *Omaha Steaks*, 128 USPQ2d at 1689-92, the record in this case supports some degree of commercial strength of Opposer’s W Marks, although not the highest on the spectrum. Opposer’s length of use, manner and reach of use, and examples of promotion of Opposer’s W Marks and some media articles about them support strength, but the lack of more probative sales and advertising figures and the greater prominence of the WRANGLER mark in many of the promotional campaigns and materials, as well as in media coverage, weigh against finding Opposer’s W Marks famous, with the highest degree of commercial strength. We therefore accord Opposer’s W Marks somewhat more than “the normal scope of protection to which inherently distinctive marks are entitled.” *Bell’s Brewery, Inc. v. Innovation Brewing*, 125 USPQ2d 1340, 1347 (TTAB 2017).

¹⁶ *Id.* at 5-6.

D. Similarity of the Marks

Turning to the first *DuPont* factor, we must compare the marks “in their entireties as to appearance, sound, connotation and commercial impression.” *Palm Bay*, 73 USPQ2d at 1691 (quoting *DuPont*, 177 USPQ at 567). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff’d mem.*, (No. 18-2236) (Fed. Cir. September 13, 2019) (quoting *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014), *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. Sept. 13, 2019)). The test assesses not whether the marks can be distinguished in a side-by-side comparison, but rather whether their overall commercial impressions are so similar that confusion as to the source of the goods offered under the respective marks is likely to result. *Coach Servs.*, 101 USPQ2d at 1721; *see also Edom Labs. v. Lichter*, 102 USPQ2d 1546, 1551 (TTAB 2012).



Applicant’s mark is  , with DENIM disclaimed. Applicant describes its mark as including a “stylized W” along with the word DENIM. Opposer’s

marks on which we focus are  ,  and  .

We bear in mind that Opposer’s W Marks do not claim color as a feature of the marks, and therefore could appear in the same color used in Applicant’s mark. We find the marks visually and phonetically similar because they consist of or prominently

feature the stylized letter W. Applicant's mark also includes the disclaimed generic or descriptive word DENIM, but DENIM is subordinate in the mark. This is because DENIM appears in relatively smaller font beneath the much more prominent W, and because the disclaimed word carries less significance in the likelihood of confusion analysis, as consumers are less likely to rely on descriptive or generic wording to indicate source. *See In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997) (in comparing THE DELTA CAFÉ to DELTA, the generic term CAFÉ lacks sufficient distinctiveness to create a different commercial impression); *see also Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (first part of a mark "is most likely to be impressed upon the mind of a purchaser and remembered."). For rational reasons, we may give more or less weight to a particular feature of a mark, such as a common dominant element, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012). So, while we do not ignore DENIM in the analysis, "the non-source identifying nature of the word[] and the disclaimer[] thereof constitute rational reasons for giving [that] term[] less weight in the analysis." *In re Detroit Ath. Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1049 (Fed. Cir. 2018).

Also, although the particular stylization of the W's differs among the marks and Applicant's stylization may be somewhat suggestive of jeans, the "verbal portion of the mark is the one most likely to indicate the origin of the goods to which it is affixed." *Viterra*, 101 USPQ2d at 1908 (quoting *CBS, Inc. v. Morrow*, 708 F.2d 1579,

218 USPQ 198, 200 (Fed. Cir. 1983)); *see also In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1184 (TTAB 2018) (“In the case of marks, such as Applicant’s, consisting of words and a design, the words are normally accorded greater weight because they are likely to make a greater impression upon purchasers, to be remembered by them, and to be used by them to request the goods.”). Consumers would call for the goods under all these marks using the W, and the stylization is immaterial when the marks are pronounced. In addition, Opposer’s W shown above on the far left, the mark in Registration Nos. 3777026 and 4656517, has a stylization quite similar to Applicant’s, particularly considering that Opposer’s W could appear in the same shade of blue. Overall, we find the marks similar in appearance and sound because Applicant’s dominant W sounds the same as and looks similar to Opposer’s W Marks, and Applicant’s additional generic or descriptive word DENIM does not distinguish the marks.

The marks also share similar connotations and commercial impressions. Each of the marks conveys the meaning and impression of the letter W, with Applicant’s mark adding the additional nuance of a reference to denim. Consumers would attribute the same meaning to, and derive the same impression from, the W in Applicant’s marks as they would in Opposer’s W Marks. The additional word DENIM in Applicant’s marks merely refers to a feature of the identified goods and services, and thus only minimally contributes to the overall meaning and connotation of Applicant’s mark, and does not change the meaning or impression of W. Given that Opposer’s W Marks, one of which is registered for dungarees (clothes usually made of blue denim),

frequently are used in connection with denim goods, and derive much of their commercial strength through association with denim goods, consumers likely would



view Applicant's mark as another variation of Opposer's Wrangler W marks, specifically for denim goods or denim-related services.

We remain mindful of the commercial strength of Opposer's W Marks and that "marks must be considered in light of the fallibility of memory and not on the basis of side-by-side comparison." *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014). Given the resemblance in sound, appearance, connotation and commercial impression, when viewed in their entireties, we find Applicant's mark similar to Opposer's W Marks. This factor weighs in favor of likely confusion.

E. The Goods and Services

"[L]ikelihood of confusion can be found 'if the respective goods [or services] are related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.'" *Coach Servs.*, 101 USPQ2d at 1722 (internal citations omitted). Under this factor, we must "focus on the application and registrations rather than on real world conditions, because 'the question of registrability of an Applicant's mark must be decided on the basis of the identification of goods set forth in the application.'" *Stone Lion Capital Partners v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014). We need not consider the relatedness of each good in Applicant's application to each good in the pertinent registrations. "[I]t is sufficient for finding a

likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in the application.” *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015) (citing *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981)).

Opposer’s and Applicant’s Class 25 goods are legally identical in part, as to certain clothing goods, such as caps, skirts, tops/shirts, vests, coats/jackets and trousers/casual pants. Broadly identified goods encompass all types of such goods, so that any clothing items in Opposer’s W Registrations that are not restricted as to material composition include such items made in whole or significant part of denim, as identified by Applicant. *See S.W. Mgmt., Inc. v. Ocinomled, Ltd.*, 115 USPQ2d 1007, 1025 (TTAB 2015) (where the goods in an application or registration are broadly described, they are deemed to encompass all the goods of the nature and type described therein); *In re Hughes Furniture Indus., Inc.*, 114 USPQ2d 1134, 1137 (TTAB 2015) (“Applicant’s broadly worded identification of ‘furniture’ necessarily encompasses Registrant’s narrowly identified ‘residential and commercial furniture.’”).

As to Applicant’s Class 24 fabrics and textiles identified as “in whole or in significant part denim,” we note that Opposer’s Registration No. 634868 covers dungarees, clothing usually made of blue denim. Also, Opposer’s testimony and evidence makes clear that its identified clothing items often are made of denim. For example, Mr. Montgomery testified that Opposer’s “W Marks [are used] across an

entire line of denim,”¹⁷ and “Wrangler’s product line featuring W Marks has consistently included denim... for at least the last 40 years.”¹⁸ Opposer’s predecessor’s website highlighting the Wrangler brand refers to “Denim” as one of four “PRIMARY PRODUCTS.”¹⁹ The same website identifies Wrangler as the “#3 Men’s Denim Brand in the U.S.”²⁰ A 2013 article from Business of Fashion refers to Opposer as a “historic denim brand” and one of the “Big Three of Denim.”²¹ Opposer’s evidentiary record overall shows that not only does Opposer’s identified clothing often come in denim, Opposer’s clothing line focuses heavily on denim, and much of its commercial strength is associated with its denim goods. Based on the foregoing, we find Applicant’s denim fabrics and textiles related to Opposer’s identified dungarees and other clothing items that include its denim goods.

Applicant’s Class 35 identification recites “the bringing together, for the benefit of others, of a variety of goods,” made in whole or in significant part of denim, including some of the same types of goods identified in Opposer’s W Registrations. As discussed above, some of Opposer’s goods are identical or legally identical to the goods featured in Applicant’s Class 35 retail service. Inherent relatedness often exists when the services in question include or focus on the sale of the particular goods in question. *See In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025, 1026 (Fed. Cir.

¹⁷ 17 TTABVUE 3.

¹⁸ 17 TTABUVE 4.

¹⁹ 17 TTABVUE 20.

²⁰ 17 TTABVUE 44.

²¹ 23 TTABVUE 12 (contify.com).

1988) (“applicant’s ‘general merchandise store services’ would include the sale of furniture and the evidence introduced by the applicant in voluminous quantity makes it clear--though its arguments attempt to play down the fact--that it does in fact sell furniture. What else it sells is irrelevant; there is overlap.”); *In re Country Oven, Inc.*, 2019 USPQ2d 443903 (TTAB 2019) (Applicant’s COUNTRY OVEN for bread buns was likely to cause confusion with the cited registration for COUNTRY OVEN for retail bakery shops. “[T]he relevant line of case law holds that confusion may be likely to occur from the use of the same or similar marks for goods, on the one hand, and for services involving those goods, on the other.”); *In re Accelerate s.a.l.*, 101 USPQ2d 2047, 2050 (TTAB 2012) (“applicant’s broadly worded ‘providing food and drink’ could encompass a coffee house ... [so that] applicant’s services, as recited, are sufficiently related to [Registrant’s] coffee”). We therefore find Opposer’s goods related to at least this retail service of Applicant’s in International Class 35.

Each of the classes in the opposed application includes one or more items that overlap with or is related to Opposer’s goods. This *DuPont* factor weighs in favor of a likelihood of confusion.

F. Trade Channels and Classes of Consumers

Opposer points to no evidence regarding the trade channels for Applicant’s Class 24 textile and fabric goods. With no evidentiary basis upon which to make a finding of fact under this factor as to the Class 24 goods, we consider it neutral.

Because Applicant’s goods Class 25 goods are in-part legally identical to Opposer’s, we must presume that they travel in the same channels of trade to at least

some of the same classes of consumers. *See Viterra*, 101 USPQ2d at 1908 (identical goods are presumed to travel in same channels of trade to same class of purchasers); *In re Inn at St. John's*, 126 USPQ2d at 1745 (“Because the services described in the application and the cited registration are identical, we presume that the channels of trade and classes of purchasers are the same.”).

Turning to Applicant’s Class 35 services that include retail services featuring denim clothing, we consider that Opposer’s channels of trade include selling its goods through its own website, as well as “through a network of nearly 900 retail outlets around the world, including mass retailers such as Target, Walmart, K-Mart, JCPenney, Kohl’s, and Sears.”²² Opposer submitted documentary evidence of this availability, as an exhibit to the Montgomery Declaration.²³ These trade channels for Opposer’s goods are the same as what Applicant recites in International Class 35 as to its retail stores including “by means of electronic media” and its provision of an “online marketplace for buyers and sellers of goods.” Thus, we find that the trade channels of Applicant’s Class 35 services would include the same channels of trade in which Opposer’s goods travel.

This factor weighs heavily in favor of a likelihood of confusion as to Applicant’s Class 25 goods and Class 35 services, and is neutral as to Applicant’s Class 24 goods.

²² 17 TTABVUE 6 (Montgomery Declaration).

²³ 21 TTABVUE 150-184.

G. Purchasing Conditions

Applicant argues that “ordinary clothing items” such as those at issue “are not going to be purchased with anything more than ordinary care by ordinary consumers.”²⁴ Given this representation, and the lack of evidence regarding the degree of care in purchasing the other goods and services at issue, we consider this factor neutral.

H. Range of Goods on Which Opposer’s Marks Are Used

“The ninth *DuPont* factor takes into account the variety of goods on which a mark is or is not used.” *DeVivo v. Ortiz*, 2020 USPQ2d 10153, *15 (citing *DuPont*, 177 USPQ at 567). “If a party in the position of plaintiff uses its mark on a wide variety of goods, then purchasers are more likely to view a defendant’s related good under a similar mark as an extension of the plaintiff’s line.” *Id.*

Opposer argues:

As noted above, Wrangler has long sold a wide ranging line of clothing and accessories, including pants, shirts, tops, hats, dresses, underwear, socks, and shoes. (Supra, p. 6). It would, therefore, be common for Wrangler to incorporate any number of its W Marks on its clothing designs, and for consumers to expect to see such Wrangler’s W Marks. Accordingly, this factor favors Wrangler.²⁵

²⁴ 24 TTABVUE 31 (Opposer’s Brief). While Opposer argues this would weigh in favor of likely confusion, that weighing would occur when consumers make impulse purchases of very inexpensive items, rather than when the consumers exercise ordinary care, as Opposer asserts here. *See DuPont*, 177 USPQ at 567.

²⁵ 24 TTABVUE 32 (Opposer’s Brief).

Opposer's items, all in the field of clothing, cannot be considered a wide variety that would render consumers more likely to view other types of goods and services (such as Applicant's non-overlapping Class 24 goods and Class 35 services) as coming from Opposer. We consider this factor neutral.

I. Absence of Actual Confusion

While Opposer has acknowledged the lack of actual confusion evidence, given that we have no indication that Applicant has used its proposed mark in commerce, there has been no opportunity for actual consumer confusion to occur. *See DuPont*, 177 USPQ at 567 (identifying seventh and eighth *du Pont* factors as “[t]he nature and extent of any actual confusion,” and “[t]he length of time during and conditions under which there has been concurrent use without evidence of actual confusion”). Accordingly, we agree that the seventh and eighth *DuPont* factors must be considered neutral.

IV. Conclusion

The legally identical-in-part goods, and other goods and services in all three International Classes in the challenged application that are related to Opposer's goods, and the overlapping channels of trade and classes of consumers as to Classes 25 and 35, weigh in favor of likely confusion. Also, Applicant's mark is similar to Opposer's W Marks on which we focused and to which we attribute some degree of commercial strength, entitling Opposer's W Registrations to a broader than normal scope of protection. Given that the relevant *DuPont* factors weigh in favor of likely

confusion, or are otherwise neutral, consumer confusion is likely as to all classes of goods and services in the challenged application.

Decision: The opposition based on likelihood of confusion is sustained.